

**Letter of Findings: 01-20182411  
Indiana Individual Income Tax  
For The Tax Years 2017**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Service member was an Indiana resident for the tax year at issue because he did not properly file the required State of Legal Residence Certificate, federal Form DD 2058, to change his residence or domicile.

**ISSUE**

**I. Individual Income Tax - Military Personnel Residency.**

**Authority:** 50 U.S.C. § 4001; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 27 (January 2014); [45 IAC 3.1-1-21](#).

Taxpayer protests the Department's assessment of individual income tax for 2017.

**STATEMENT OF FACTS**

Taxpayer is in the military service and received W-2 wages on which tax was withheld for Indiana and local income tax purposes. Taxpayer timely filed a 2017 Reciprocal Nonresident Indiana Individual Income tax Return (IT-40RNR), claiming refunds of the tax withheld. The refund was issued in June 2018.

In September 2018, the Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2017; thus concluding that Taxpayer's income was subject to Indiana income tax and that the Department issued the refund erroneously. The Department also informed Taxpayer that he was required to file Form IT-40, not IT-40RNR, because he is considered a full-year Indiana resident for taxation purposes. As a result, the Department assessed additional Indiana income tax for the tax year at issue, including interest, seeking repayment of the erroneously issued refund.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment. Additional facts will be provided as necessary.

**I. Individual Income Tax - Military Personnel Residency.**

**DISCUSSION**

The Department determined that Taxpayer was an Indiana resident for the tax years at issue and that Indiana income tax was due for tax year 2017. Taxpayer, to the contrary, argued that his W-2 income was not subject to Indiana income tax because he has lived in Kentucky since 2011. Thus, the issue is, for the tax year at issue, whether Taxpayer's income was subject to Indiana income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax

year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Nonetheless, when a person is a service member, the service member's residence or domicile is determined according to the federal law. Specifically, 50 U.S.C. § 4001(a)(1) provides, "A service member shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the service member by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." To further explain, the Department's Income Tax Information Bulletin 27 (January 2014), 20140129 Ind. Reg. 045140013NRA, in relevant part, states:

## **RESIDENCY**

Military personnel who enter the armed forces as Indiana residents remain legal residents of Indiana regardless of duty station until official action is taken to change their legal residence. This can be accomplished by filing a State of Legal Residence Certificate, Form DD 2058, with the military personnel office.

In this instance, Taxpayer asserted that, while he enlisted in the United States Army in Indiana 21 years ago, he has since moved from Indiana to Kentucky in 2011. In support of his argument that he is a Kentucky resident, Taxpayer provided copies of his Kentucky driver's license, mortgage, and concealed weapons permit. Taxpayer also offered to provide copies of his Kentucky income tax returns to support his protest.

Upon review, however, Taxpayer is mistaken. As mentioned above, Taxpayer is a service member and therefore his residence or domicile is determined according to the federal law. Taxpayer began his service while living in Indiana. Therefore, Indiana is Taxpayer's residence or domicile until he properly files the required "State of Legal Residence Certificate, Form DD 2058" to change his residence or domicile pursuant to the Information Bulletin 27. Following the hearing, Taxpayer was provided with the opportunity to provide a copy of Form DD 2058 showing that his residency had been changed to Kentucky; however, no such documentation was provided. Taxpayer did not provide documentation showing that Taxpayer filed the required "State of Legal Residence Certificate, Form DD 2058" to properly change his residence or domicile for the tax year at issue; therefore, his residence or domicile remained in Indiana. Thus, Taxpayer was required to file the Indiana Full-Year Resident return (IT-40) and his income for the tax years was subject to Indiana income tax.

Since the Department concludes that Taxpayer was domiciled in Indiana, the Department was correct in issuing a proposed assessment seeking repayment of the erroneously issued refund for tax year 2017. Taxpayer is required to file his Indiana income tax return as a full-year resident until such time as he takes official action to change his residency in accordance with federal law. Given the totality of the circumstances, the Department is not able to agree that Taxpayer met his burden of demonstrating that he was not Indiana resident for the tax year at issue.

## **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 03/27/2019 by Legislative Services Agency*

An [html](#) version of this document.